

APPEAL NO. 040404
FILED APRIL 19, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 11, 2004. The hearing officer determined that: (1) the compensable injury of _____, does not include an injury to the left elbow and neck; (2) the appellant (claimant) does not have disability; and (3) the Texas Workers' Compensation Commission (Commission) has jurisdiction to adjudicate the issue of extent of injury to the neck. The claimant appeals the extent-of-injury and disability determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant attached additional documentation to his appeal in support of his position. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also appeals the hearing officer's determination on the basis of venue. We note that the parties stipulated that venue was proper in the Commission's Corpus Christi Field Office. Section 410.166 provides that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Accordingly, we will not reverse the hearing officer's decision on this basis.

The claimant appears to complain that he received ineffective assistance from his attorney at the hearing below. The Appeals Panel does not review the competency or tactics of a licensed attorney in proceedings before the Commission. Texas Workers' Compensation Commission Appeal No. 941271, decided October 31, 1994.

Finally, the claimant requests reversal of the hearing officer's decision for the development and presentation of additional evidence on his behalf. Our review of the record reveals that the claimant was given ample opportunity to meet his burden of proof on the disputed issues. We decline, therefore, to grant the claimant's request.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge